

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 00-319 & 00-320

IN THE MATTER OF
GEORGE J. MANDLE, JR.
AN ATTORNEY AT LAW

Decision

Argued: December 21, 2000

Decided: May 29, 2001

Gianfranco A. Pietrafesa appeared on behalf of the District XII Ethics Committee.

Respondent waived appearance for oral argument.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us based on a recommendation for discipline filed by the District XII Ethics Committee ("DEC"). The first complaint (DRB 00-319) charged respondent with violations of RPC 8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority) (count one), RPC 1.1(a) (gross neglect) (count two), RPC 1.3 (lack of diligence) (count three) and RPC 1.4(a) (failure to communicate with

client) (count four). The second complaint (DRB 00-320) charged respondent with violations of RPC 8.1(b) (count one) and RPC 1.4(a) (count two).

Respondent was admitted to the New Jersey bar in 1970. At the relevant times, he maintained a law practice in Linden, New Jersey.

Respondent received a reprimand in 1996 for misconduct in four matters, including pattern of neglect, gross neglect, failure to act with diligence and failure to cooperate with ethics authorities. In re Mandle, 146 N.J. 520 (1996). In 1999, respondent was reprimanded for gross neglect, lack of diligence and failure to communicate with a client. He was also ordered to return a \$500 retainer to his client. In re Mandle, 157 N.J. 68 (1999). On May 11, 2000 we determined to reprimand respondent for gross neglect, lack of diligence, failure to properly disburse closing funds by allowing them to remain in his account and failure to cooperate with ethics authorities. As of the date of this decision, that matter is pending with the Court. Finally, respondent was temporarily suspended by the Court on May 9, 2000 for failure to comply with the terms of the Court's October 16, 1996 order, presumably the portion requiring him to practice under the supervision of a proctor.

Docket No. DRB 00-319 - The Nommensen Matter (District Docket No. XII- 54E)

The first count of this complaint charged respondent with failure to reply to the grievance sent to him on October 20, 1999 and, thereafter, to two additional letters sent by the DEC on November 4 and December 8, 1999. Respondent admitted that he failed to provide a written reply to the above letters.

Respondent was hired in March 1998 to represent the estate of Elsbeth Nommensen, who died on March 24, 1998. Respondent was retained by the executor of the estate, William W. Werkmeister, Sr., the grievant in this matter. Werkmeister, also a beneficiary of the estate, was the decedent's nephew and respondent's brother-in-law. Werkmeister retained respondent to administer the estate and, among other things, prepare the estate returns. Respondent failed to timely file both the New Jersey inheritance tax return and the federal estate tax return, which were finally filed on October 1 and November 18, 1999, respectively.

Thereafter, by letter dated January 3, 2000, the Internal Revenue Service ("IRS") notified Werkmeister that errors in the estate tax return required additional taxes of \$43,330.19, which included \$7,614.17 in penalty and interest.

Werkmeister testified that, as a result of this notice, he retained an accountant to review the forms filed by respondent. According to Werkmeister, the accountant informed him that there were errors both in the forms used and the entries on the forms.

Werkmeister further testified that respondent failed to return a number of his telephone calls. As to this claim, Werkmeister adopted as his testimony the information set forth in his grievance (exhibit C-1). The grievance covered the period from August 25 to October 5, 1999 and included entries for fifteen dates. One entry spanned the period from September 7 through September 29, 1999. Of those entries only the ones for September 4 and September 5, 1999 indicated that Werkmeister did not hear from respondent. As to the September 4, 1999 entry, Werkmeister indicated that he did not hear from respondent "the entire day" and then spoke to respondent's mother, who informed him that respondent was ill. Werkmeister's September 5, 1999 entry also indicated that he did "not hear from respondent all day." Most of the entries referred to Werkmeister's attempts to contact respondent about signing documents for the estate taxes. The September 7 through September 29, 1999 entry stated that Werkmeister had received from respondent "[a] non-ending array of lies and excuses for not having the papers ready for signing (e.g., ran out of forms, needed to call the IRS and State for information, needed to get copies of the house appraisal to include with the tax packages, etc., etc., etc.)."

Respondent, in turn, testified that, when he received the grievance, he felt overwhelmed and did not know how to reply to it. He claimed that he was overwhelmed by the size of the estate, that he had never handled one that large (between \$1.2 and \$1.3 million) and that, during his legal career, he had handled a total of only ten to fifteen estate matters — four or five within the last three years. Respondent stated that he is a general

practitioner, not an expert in estate matters. Respondent admitted that he had made a mistake in agreeing to handle the Nommensen estate.

Respondent also testified that "early on" he had called the State of New Jersey Inheritance Tax Bureau to request a packet of forms. He contended that, if he used the wrong forms, it was not his fault. Similarly, respondent testified that he had used the forms supplied by the IRS.

Respondent admitted that he put the estate matter off because he was not comfortable with it and that he should have told Werkmeister to find another attorney to handle the estate. He apologized for making that mistake.

As to the charge of a failure to communicate with the client, respondent admitted that, although he had spoken to Werkmeister on a number of occasions, there were many telephone calls that were either not answered to Werkmeister's satisfaction or not answered at all.

The DEC concluded that respondent violated RPC 8.1(b), because he failed to provide a written response to the grievance, despite its repeated demands. The DEC also found that respondent neglected the duties required of him as counsel for the estate, in violation of RPC 1.1(a), and failed to act with reasonable diligence and promptness in representing the estate, in violation of RPC 1.3. Finally, the DEC found that respondent failed to keep his client reasonably informed and to promptly comply with his requests for

information about the matter, in violation of RPC 1.4(a). The DEC recommended a term of suspension.

Docket No. DRB 00-320 - The Kelly Matter (District Docket No. XII-99-055E)

This matter proceeded without the testimony of the grievant, who was injured and unable to appear at the DEC hearing.

The first count of the complaint charged respondent with failure to reply to a lawful demand for information from a disciplinary authority. Specifically, respondent failed to reply to the October 26, 1999 grievance and to two subsequent letters from the DEC. Respondent admitted these violations in his answer to the complaint

The second count of the complaint alleged that, in July 1999, respondent was asked to prepare a deed transferring real property from Alice Kelly to his clients, Kelly's son and daughter-in-law, the grievants. The complaint further alleged that respondent did not prepare the deed, even though he advised the grievants that he had done so. Respondent's testimony, however, was that he had prepared the deed and mailed it for recording, but that it had been returned for insufficient postage. Thereafter, respondent added, he had left the papers in his car, where they remained forgotten.

A short time later, Alice Kelly retained an attorney to stop the transfer of the property. The complaint alleged that respondent failed to advise the grievants that Alice Kelly's attorney had contacted him to stop the transfer and that respondent failed to reply to the

grievants' attempts to contact him. Respondent was charged only with a violation of RPC 1.4(a). Respondent testified that he had at least three or four telephone conversations with one of the grievants — at least two with Alice Kelly's attorney and with another attorney that the grievants had purportedly contacted. This testimony corresponds with respondent's answer to the complaint.

The DEC determined that respondent violated RPC 8.1(b), but did not find clear and convincing evidence of a violation of RPC 1.4(a). The DEC recommended a reprimand.

* * *

Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. Respondent admitted that he failed to answer the grievance and subsequent requests for information in the Kelly and Nommensen matters. We, thus, find a violation of RPC 8.1(b) in both matters.

In the Nommensen matter, respondent was charged with a violation of RPC 1.4(a) (a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information). Respondent admitted that he replied to some, but not all, of Werkmeister's telephone calls. Werkmeister's grievance also showed that respondent replied to most of Werkmeister's telephone calls. Because, however, the

evidence of a failure to communicate here does not rise to the level of clear and convincing, we dismissed the charge of a violation of RPC 1.4(a).

Respondent did, however, fail to properly and timely prepare the estate returns. Both forms were filed late and one form contained sufficient errors to result in the assessment to the estate of over \$7,000 in penalty and interest. Respondent's conduct in this regard was, therefore, a violation of RPC 1.3 and RPC 1.1(a).

As to the Kelly matter, the DEC properly found that there was no clear and convincing evidence of a violation of RPC 1.4(a). Only respondent testified at the DEC hearing and he claimed that he had had at least three or four telephone conversations with the grievants and two other attorneys. Because there was no evidence presented to rebut this testimony, we dismissed the charge of a violation of RPC 1.4(a).

Generally, cases involving similar violations have resulted in the imposition of either an admonition or a reprimand. See In the Matter of Juan J. Gonzalez, Docket No. DRB 99-342 (December 20, 1999) (admonition for gross neglect and lack of diligence); In the Matter of Michael A. Amantia, Docket No. DRB 98-402 (September 22, 1999) (admonition for lack of diligence, gross neglect and failure to communicate with client). In the Matter of David R. Bennett, Docket No. DRB 98-371 (November 24, 1998) (admonition where, in two matters, attorney displayed lack of diligence and gross neglect and, in one of the two matters, failed to cooperate with disciplinary authorities); and In re O'Neill, 157 N.J. 639

(1999) (reprimand for gross neglect, lack of diligence, failure to keep client reasonably informed about the status of the matter and failure to cooperate with ethics authorities).

Because, here, respondent's conduct was exacerbated by his disciplinary history, we unanimously determined to impose a three-month suspension, to run consecutively to his temporary suspension. Two members did not participate.

We further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: May 29 2001

By:



ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

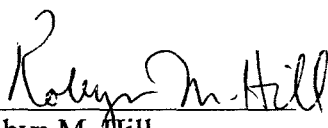
**In the Matter of George J. Mandle, Jr.
Docket Nos. DRB 00-319 and 320**

Argued: December 21, 2000

Decided: May 29, 2001

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling		X					
Peterson		X					
Boylan		X					
Brody		X					
Lolla		X					
Maudsley							X
O'Shaughnessy		X					
Schwartz							X
Wissinger		X					
Total:		7					2


Robyn M. Hill 7/25/01
Chief Counsel